

Contingency Contracting Training



The Antideficiency Act (ADA)

Agile Contracting Support...Anytime...

Current a/o 15 Dec

Anywhere



Overview

- Antideficiency Act prohibits obligations and expenditures **in advance of** or **in excess of** an appropriation
- Fiscal Law
 - Purpose
 - Time
 - Amount
- Exceptions
- Sanctions





The Antideficiency Act

- “The Antideficiency Act evolved over a period of time, in response to various abuses. As late as the post-Civil War period, it was not uncommon for agencies to incur obligations in excess of or in advance of appropriations. Some agencies would spend their entire appropriations during the first few months of the fiscal year, continue to incur obligations, and then return to Congress for appropriations to fund these ‘coercive deficiencies.’” **B-300480.2, June 6, 2003.**





Fiscal Law Purpose

- “No money shall be drawn from the treasury except in consequence of appropriations made by law.” Article I, Section 9, Clause 7
- Only Congress can determine the purposes for which public funds may be disbursed.
- “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” 31 U.S.C. § 1301(a)





Fiscal Law Purpose

- “It is difficult to see how a legislative prohibition could be expressed in stronger terms. The law is plain and any disbursing officer disregards it at his peril.”
 - 4 Comp. Dec. 569, 570 (1898)
- The “Purpose Statute” was enacted in the Act of March 3, 1809 because of perceived abuses by the military departments.
- Appropriations for DoD are differentiated by Service (Air Force, Army, etc.) and Component (Active, Reserve, etc.) and Purpose (O&M, Personnel, etc.)
 - **Nearly 100 separate appropriations in all!**





Fiscal Law Purpose

- Major Appropriations
 - Personnel – pay and allowances, PCS, etc.
 - O&M – operations and maintenance of installations, day-to-day expenses of training exercises, deployments, etc.
 - Procurement – production and modification of aircraft, etc.
 - RDT&E – basic and applied scientific research, etc.
 - MILCON – military construction





Fiscal Law Purpose

- Anatomy (partial) of a fund cite
 - 5753600 298 4720 613145 099950 62230F 59600 HG
AA
 - 57 – Department
 - 5 – Fiscal Year
 - 3600 – Appropriation Symbol
 - 29 – Fund Code
 - 5 – Fiscal Year
 - 47 – Operating Agency Code
 - 20 – Allotment Serial Number





Fiscal Law Purpose

- Three-part test
 - Particular statutory purpose or “Necessary Expense”
 - Congress does not specify every item of expenditure in an Appropriations Act.
 - Agencies have “reasonable discretion”
 - Expenditures must be “reasonably necessary” or “contribute materially”
 - Not prohibited by law
 - Not otherwise provided for





Fiscal Law Purpose

- The DoD Appropriations Act, 2004
 - Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, for military functions administered by the Department of Defense, and for other purposes. **Pub. L. No. 108-87, Sept. 30, 2003**





Fiscal Law Purpose

- Operation and Maintenance, Air Force
 - For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; and not to exceed \$7,801,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes, \$26,904,731,000: Provided, That notwithstanding any other provision of law, that of the funds available under this heading, \$750,000 shall only be available to the Secretary of the Air Force for a grant to Florida Memorial College for the purpose of funding minority aviation training. **Pub.L.No. 108-87, Title II**





Fiscal Law Purpose

- Missile Procurement, Air Force [3020]
 - For construction, procurement, and modification of missiles, spacecraft, rockets, and related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, \$4,165,633,000, to remain available for obligation until September 30, 2006.

Pub.L.No. 108-87, Title III





Fiscal Law Purpose

- Pub.L.No. 108-87, Title VIII
 - Sec. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.
 - Sec. 8019. None of the funds available to the Department of Defense may be used to demilitarize or dispose of M-1 Carbines, M-1 Garand rifles, M-14 rifles, .22 caliber rifles, .30 caliber rifles, or M-1911 pistols.





Fiscal Law Purpose

- Pub.L.No. 108-87, Title VIII
 - Sec. 8020. No more than \$500,000 of the funds appropriated or made available in this Act shall be used during a single fiscal year for any single relocation of an organization, unit, activity or function of the Department of Defense into or within the National Capital Region:
 - Provided, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the congressional defense committees that such a relocation is required in the best interest of the Government.





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Fiscal Law Purpose

- Generally, it is impermissible to augment an appropriation
 - By paying out of the wrong appropriation
 - Miscellaneous Receipts (31 U.S.C. § 3302(b)) violation.
 - Accepting voluntary services without statutory authority
 - Obtain agreement (no cost) in writing – in advance!





Fiscal Law Purpose

- Investment / Expense Threshold
- Expenses are costs of resources consumed in operating and maintaining DoD
 - Normally financed with O&M funds
- Investments are acquisitions of DoD capital assets
 - Normally financed with Procurement funds
 - System cost \geq \$250,000
 - Computer buys need careful scrutiny





Fiscal Law Purpose

- Construction vs. Repair
 - Repair = O&M funds
 - Minor Construction \leq \$750,000 O&M (or \leq \$1.5M if to correct a deficiency that threatens life, health or safety)
 - Unspecified Minor Military Construction
 - \leq \$1.5M (or \leq \$3M if to correct a deficiency which threatens life, health or safety)
 - Secretarial approval
 - Congressional notification (wait 21 days, 30 days for USAF)
 - Specified Military Construction
 - No Project Splitting!





Fiscal Law Purpose

- Violation of Purpose Statute may be ADA violation
- May avoid ADA violation if:
 - Proper funds were available at time of obligation
 - Proper funds were continuously available until the correction is made





Fiscal Law Time

- Most appropriations have a period of availability
 - Specified time available for obligation
 - May not obligate before appropriation and receipt
 - Must be obligated before they expire
 - Exceptions are rare (statutory)
 - Once obligated, disbursement may be made before or after expired, but before closed
 - Appropriations close five years after they expire





Fiscal Law Time

- Congress determines the period of availability for each appropriation
- Generally:
 - O&M – 1 year
 - Personnel – 1 year
 - RDT&E – 2 years
 - Procurement – 3 years
 - MILCON – 5 years





Fiscal Law Time

- Appropriation is available for obligation only for expenses which are a Bona Fide Need of the period of availability for obligation. 31 U.S.C. § 1502(a)
 - Supplies – FY of use
 - Lead-Time exception
 - Stock level exception
 - FY end stockpiling of supplies is **prohibited**





Fiscal Law Time

- Services – FY of performance
 - Non-severable services
 - Statutory exception 10 U.S.C. § 2410a for severable services which do not exceed 12 months
 - Allows us to break the fiscal year cycle





Fiscal Law Time

- Construction need must arise while funds are available for obligation
 - Normal weather
 - Required delivery date
 - When Government intends to make site available to the contractor
 - Degree of control the Government has over when the contractor can begin work





Fiscal Law Amount

- May not make or authorize an obligation or expenditure that exceeds an amount available in an appropriation or fund.
- 31 U.S.C. § 1341(a)(1)(A)
- Includes expired appropriations
- Statutory restriction or prohibition may make amount available ZERO!





Fiscal Law Amount

- Pub.L.No. 108-87, Title VIII
 - Sec. 8045. (a) None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes,” approved March 3, 1933 (41 U.S.C. 10a et seq.).





Fiscal Law Amount

- May not make or authorize an obligation or expenditure that exceeds an apportionment.
- 31 U.S.C. § 1517(a)(1)
- An apportionment is a distribution by OMB of amounts available for specified time periods, activities, projects or objects.
- This statute does not prohibit obligating **in advance of** an apportionment. (But, do not obligate in advance of the appropriation without authority....)





Fiscal Law Amount

- May not make or authorize an obligation or expenditure that exceeds a formal subdivision established by regulations.
- 31 U.S.C. § 1517(a)(2)
- Allocations and allotments are formal subdivisions.
- Allowances are not formal subdivisions.





Fiscal Law Amount

- Open-ended indemnification provisions violate 31 U.S.C. § 1341.
 - There are exceptions to this rule, but they are statutory!
- A judgment by a court or board of contract appeals in excess of an appropriation or subdivision of funds is not a violation.





Exceptions

- Congress may authorize a contract in advance or in excess of an appropriation
 - Ex: 41 U.S.C. § 11, permits DoD to contract for clothing, subsistence, etc...for the current fiscal year
 - That is contract authority, not disbursement authority
- Contracts conditioned on the availability of funds
 - Solicitation and contract include the clause
 - **FAR 52.232-18, Availability of Funds**





Sanctions

- Adverse personnel actions
 - Suspension w/o pay
 - Removal from office
 - “Even though a violation may not have been committed willfully or knowingly, that, by itself, does not justify the absence of disciplinary action....” **AFI 65-608**





Sanctions

- Class E felony (knowing / willful)
 - \$5,000 fine
 - 2 years
 - Knowing and willful concealment of a violation is a felony!
 - **Reporting procedures may be found in AFI 65-608**
- SecDef must report violations to the President (through OMB) and to Congress
- This is not your 15 minutes of fame!





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